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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/458,796	12/09/1999	DONALD F. GORDON	19880-000720	9295

26291 7590 04/21/2004

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EXAMINER
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HUYNH, SON P

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 04/21/2004

20

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/458,796

Applicant(s)

GORDON ET AL.

Examiner

Son P Huynh

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 16 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 03 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-19 and 21.

Claim(s) withdrawn from consideration: 20.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☒ Other: See Continuation Sheet

Continuation of 10. Other: please refer to attachments for Response to Arguments, and Notice of References Cited..

***Response to Arguments***

Applicants' arguments filed on 3/16/2004 have been fully considered but they are not persuasive.

Applicants argue the Examiner has prematurely issued a Final Office Action (Paper No. 17) since newly cited art forms the basis of the rejection.

In response, it is noted that the Final Office Action was issued in response to the Amendment (Paper No. 16) filed on 8/26/2003. Amendments to claims 1 and 14 in this Amendment changed the scope of the claims. Therefore, the finality of Office Action (Paper No. 17) is appropriate

As requested by Applicants regarding Official Notice taken by the examiner, that is synchronization of realtime and nonrealtime contents was well known in the art at the time the invention was made, the Examiner is hereby citing references: US 6,584,125; WO 98/53611; US 6,029,045; US 6,359,910; in addition to cited references: US 6,177,931; 5,844,620.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re*

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*Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Naimpally discloses MPEG data encoder 144 configured to encode data; video encoder 140, and audio encoder 142 is configured to encode video, and audio respectively; multiplexer 146 formats each of the PES, provided by the encoders, into one or more transport packets. The multiplexer 116 receives the transport packet, reformats and interleaves the transport packets for the individual single transport stream (figures 1A, 1B, col. 3, lines 50-61, col. 5, line 30+). Thus, the non-realtime encoder as claimed is met by MPEG data encoder 144; the realtime encoder as claimed is met by video encoder 140 or audio encoder 142; the remultiplexer as claimed is met is met by multiplexer 146. Naimpally also discloses providing timing signal containing timing information for each of respective one of the transport packets in the stream and means for encoding time information (col. 10, lines 60-65). However, Naimpally does not specifically disclose a time stamp unit coupled to the remultiplexer to provide time stamp and synchronization realtime and nonrealtime.

Mao discloses provide time stamp (adjust PCR at the re-multiplexer 70 –col. 5, lines 1-24). Yanagihara also discloses re-timestamp 12 coupled to MUX 10 to provide time stamp (col. 7, line 58+). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Naimpally to use the teaching as taught by Mao or Yanagihara in order to adjust time in the signal. However, neither Naimpally nor Mao specifically discloses synchronization realtime and nonrealtime content. Official Notice is taken that synchronization realtime and nonrealtime contents is well known in the art as shown in references cited above. Therefore, it would have


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been obvious to one of ordinary skill in the art to modify Naimpally and Mao (or Yanagihara) with the well-known teaching in the art in order to allow viewer to simultaneously view realtime and nonrealtime contents.

Applicants further argue Adams does not teach or suggest, "encoding rate for the non-realtime content is determined based on a maximum bit rate anticipated for the encoded realtime content." Examiner respectfully disagrees.

Adams discloses if and when all video buffers 400 are empty, the selector passes data from the application buffer 402 (col. 5, line 1+). Adams further discloses channel rate control circuit 708 monitors the fullness of the encoder buffer, and, in response, controls the processing rate of the encoder 202 and the encoder transmit processor 706 (col. 5, line 35+). Thus, maximum bit rate anticipated for video content is anticipated when video buffer fullness is less than video buffer fullness threshold; and if the video buffer is empty, then the selector pass application data from application buffer to the output buffer. As a result, the fullness of application buffer decreases, which causes encoding rate of non-realtime content increase. Therefore, Adams teaches "encoding rate for the non-realtime content (application data) is determined based on a maximum bit rate anticipated for the encoded realtime content (video content).

For reasons discussed above, the examiner maintains rejections as discussed in the Final Office Action (Paper No. 17).



VIVEK SRIVASTAVA  
PRIMARY EXAMINER